

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
U.S. DISTRICT COURT
MASSACHUSETTS

DANZAS CORPORATION d/b/a DHL DANZAS
AIR & OCEAN,

Plaintiff,

- against -

KROFTA TECHNOLOGIES CORPORATION,
PETER R. KIRCHNER, MICHAEL NOYES,
NORTHEAST FABRICATORS & MECHANICAL
SERVICES, LLC, and DANIEL SHEPARD,

Defendants.

Civil Action No.: 04-30219-MAP

DEFENDANT SHEPARD'S LOCAL RULE 56.1
STATEMENT OF UNDISPUTED FACTS

Defendant Daniel Shepard, pursuant to District of Massachusetts Local Rule 56.1, for his Statement of Undisputed Facts in support of Summary Judgment, states as follows:

1. Daniel Shepard is over the age of majority.
2. Daniel Shepard was the President of Krofta Technologies Corporation ("Krofta") from June, 2002 until he resigned effective January 23, 2004. His last day with Krofta was January 16, 2004. He was President in name only; Krofta was controlled by NorthEast Mechanical Fabricators in which he was a minority partner. (Affidavit of Daniel Shepard, Ex. 1 hereto, ¶ 1).
3. Daniel Shepard's professional background and experience is in sales and marketing. While President of Krofta, his primary objective was to sell the company. (Shepard Aff., ¶ 2).
4. In May, 2003, Daniel Shepard signed a DHL credit application, which had a limit of \$10,000, and which included a personal guaranty ("Application"). A true and correct copy is attached to the Shepard Affidavit as Exhibit A. (Shepard Aff., ¶ 3).
5. When Daniel Shepard resigned from Krofta, his agreement with the company was that the Application would be replaced and that Krofta and NorthEast would indemnify him for all 0504121432

costs associated with the Application. (Shepard Aff., ¶ 4). His understanding is that in February 2004 Krofta and its principals submitted a new credit application to DHL. Daniel Shepard is advised that the DHL credit application dated February 2004, a copy of which is attached to Mr. Shepard's affidavit as Exhibit B, was produced by Krofta in this litigation. (Shepard Aff., ¶ 4).

6. Through summer and fall of 2003, the Krofta equipment was shipped by DHL to the Dominican Republic. While Daniel Shepard was at Krofta, virtually all of the communications with DHL on the subject of shipping or storage were through Neesha Coles, an office clerk at Krofta. (Shepard Aff., ¶ 5).

7. Daniel Shepard did not speak or communicate with any representative of DHL about the shipping of the Krofta equipment to the Dominican Republic, except on perhaps one or two occasions. His best recollection of these telephone calls is that, sometime in the late Summer or Fall of 2003, DHL asked that the Krofta account be made current, as precondition to any further shipments. (Shepard Aff., ¶ 6).

8. At that time, the balances on the DHL account were in the range of \$15,000 to \$30,000, attributable to the shipment of equipment to the Dominican Republic. In response to DHL's requests, any outstanding balances were paid and shipments continued. (Shepard Aff., ¶ 7).

9. Daniel Shepard did not speak or communicate with any representative of DHL about storage of the Krofta equipment in the Dominican Republic. He was aware of Krofta's need for such storage to be arranged. His understanding was that Ms. Coles was handling the issue of storage on Krofta's behalf. (Shepard Aff., ¶ 8).

10. When Daniel Shepard left Krofta on January 16, 2004, the DHL account was in good standing. There was either no balance outstanding or a small balance. He does not believe that he saw, or was made aware of, any invoices for storage of the equipment in the Dominican Republic. (Shepard Aff., ¶ 9). Mr. Shepard is advised that DHL's production of documents includes invoices for storage dated beginning in March, 2004, after he had left Krofta.

11. Daniel Shepard did not make any statements or assurances of any kind to any representative of DHL about storage of Krofta equipment in the Dominican Republic, or Krofta's payment for such storage. He never told any representative of DHL, in writing or otherwise, that Krofta would make payment for storage of the equipment in the Dominican Republic. (Shepard Aff., ¶ 10).

12. In Daniel Shepard's dealings with DHL and the Dominican Republic contract, he acted solely on behalf of Krofta as President. The only exception was his personal guaranty made as part of the credit application to DHL, which was capped at \$30,000 and extinguished in January or February, 2004. (Shepard Aff., ¶ 11).

13. Daniel Shepard did not receive any personal benefit from any of Krofta's dealings with DHL or the Dominican Republic contract, except compensation as an officer and principal of Krofta. (Shepard Aff., ¶ 12).

DEFENDANT DANIEL SHEPARD

By:

Paul S. Weinberg, Esq., BBO No. 519550
John E. Garber, Esq., BBO No. 635313
Weinberg & Garber, P.C.
71 King Street
Northampton, MA 01060
(413) 582-6886
fax (413) 582-6886

CERTIFICATE OF SERVICE

I, John E. Garber, Esq., hereby certify that on this 19th day of May, 2005, I served a copy of the foregoing by First Class Mail to counsel.

Subscribed under penalties of perjury.

John E. Garber, Esq.

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DANZAS CORPORATION d/b/a DHL DANZAS
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Plaintiff,

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KROFTA TECHNOLOGIES CORPORATION,
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NORTHEAST FABRICATORS & MECHANICAL
SERVICES, LLC, and DANIEL SHEPARD,

Defendants.

Civil Case no.: 04-30219-MAP

AFFIDAVIT OF DANIEL SHEPARD

Daniel Shepard, being of lawful age, deposes and states under the pains and penalties of perjury, as follows:

1. I was the President of Krofta Technologies Corporation ("Krofta") from June, 2002 until I resigned effective January 23, 2004. My last day at Krofta was on January 16, 2004. I was President in name only; Krofta was controlled by NorthEast Mechanical Fabricators in which I was a minority partner.

2. My professional background and experience is in sales and marketing. While President of Krofta, my primary objective was to sell the company.

3. In May, 2003, I signed a DHL credit application, which had a limit of \$10,000 and which included a personal guaranty ("Application"). A true and correct copy is attached as Exhibit A.

4. When I resigned from Krofta, my agreement with the company was that the Application would be replaced and that Krofta and NorthEast would indemnify me for all costs associated with my Application. My understanding is that in February 2004 Krofta and its

principals submitted a new credit application to DHL. I am advised that the Krofta credit application to DHL dated February 3, 2004, with a limit of \$50,000, was produced by Krofta in this litigation. A copy of the subsequent application produced is attached hereto as Exhibit B.

5. Through Summer and Fall of 2003, the Krofta equipment was shipped by DHL to the Dominican Republic. While I was at Krofta, virtually all of the communications with DHL on the subject of shipping or storage were through Neesha Coles, an office clerk at Krofta.

6. I did not speak or communicate with any representative of DHL about the shipping of the Krofta equipment to the Dominican Republic, except on perhaps one or two occasions. My best recollection of these telephone calls is that, sometime in the late Summer or Fall of 2003, DHL asked that the Krofta account be made current, as precondition to any further shipments.

7. At that time, the balances on the DHL account were in the range of \$15,000 to \$30,000, attributable to the shipment of equipment to the Dominican Republic. In response to DHL's requests, any outstanding balances were paid and shipments continued.

8. I did not speak or communicate with any representative of DHL about storage of the Krofta equipment in the Dominican Republic. I was aware of Krofta's need for such storage to be arranged. My understanding was that Ms. Coles was handling the issue of storage on Krofta's behalf.

9. When I left Krofta in mid-January, 2004, the DHL account was in good standing. There was either no balance outstanding or a small balance. I do not believe I saw or was made aware of any invoices for storage of the equipment in the Dominican Republic. I am advised that DHL's and Krofta's production of documents in this case includes the DHL invoices for storage, the earliest of which are dated in March 2004, after I had left Krofta.

10. I did not make any statements or assurances of any kind to any representative of DHL about storage of Krofta equipment in the Dominican Republic, or Krofta's payment for such

storage. I never told any representative of DHL, in writing or otherwise, that Krofta would make payment for storage of the equipment in the Dominican Republic.

11. In my dealings with DHL and the Dominican Republic contract, I acted solely on behalf of Krofta as President. The only exception was my personal guaranty made as part of the credit application to DHL, which was capped at \$10,000 and replaced in January, 2004.

12. I did not receive any personal benefit from any of Krofta's dealings with DHL or the Dominican Republic contract, except compensation as an officer and principal of Krofta.

Further Affiant Sayeth Not



Daniel Shepard

EXHIBIT A

DANZAS**INTERCONTINENTAL****CREDIT APPLICATION**

P.O. Box 66728 • Renton, WA 98058-1728

Phone: (425) 430-4144
Fax: (425) 817-2825

TYPE OR PRINT ALL INFORMATION

NAME **Krofta Technologies Corp.** :
 PHYSICAL ADDRESS **401 Sixth Street** :
 BUILDING NUMBER **P.O. Box 7** :
 IF BRANCH, GIVE HOME
 OFFICE ADDRESS

PHONE **(425) 236-5834** :
 FAX **(425) 236-6917**
 CITY **Renton** : STATE **WA** : ZIP **98026**
 CITY **Renton** : STATE **MA** : ZIP **01227**

ARE PURCHASE ORDERS PROCURED?

Yes

AUTHORIZED ACCOUNTS HELD

WILL PAYMENT BE MADE, PRIOR: BRANCH HOME OFFICE
 TYPES OF BUSINESS REQUESTED: DOMESTIC FREIGHT PARTNERSHIP CUSTOMS CLEARANCE AIR AGENT AIR EXPORT OCEAN IMPORT OCEAN EXPORT TRANSPORT INSURANCE WATERFRONTING
 AIR CARRIER AIR TRUCKING LENGTH OF TIME IN BUSINESS: 1-5 YEARS 5-10 YEARS 10+ YEARS
 NATURE OF BUSINESS

OWNERS OR OFFICERS

FULL NAME/NO. OF INDIVIDUALS, PLEASE	SOCIAL SECURITY NO.	TIME AND % OF OWNERSHIP	RESIDENCE ADDRESS
Don Shepard	601-48-8000	President	148 Orchard Circle, Richmond, MA 06474
Mike Naples	613-54-4288	Vice President	59 Frederick Ave., Raritan, NJ 08864
Pete Kirchner	613-54-4452	Treasurer	15 Clark St., Raritan, NJ 08864

PLEASE SUBMIT A CURRENT FINANCIAL STATEMENT OR ANNUAL REPORT

CREDIT INFORMATION

BANK REFERENCE

NAME / BRANCH	ADDRESS / CITY, STATE & ZIP	OFFICER TO CONTACT	PHONE	TIME OF ACCOUNT # NUMBER
H		()	()	
R		()	()	
S		()	()	
T		()	()	
U		()	()	
V		()	()	
W		()	()	
X		()	()	
Y		()	()	
Z		()	()	

TRADE REFERENCES (INCLUDE ONE TRANSPORTATION COMPANY)

NAME

ADDRESS

PERSON TO CONTACT

PHONE

FAX

CREDIT AND BILLING TERMS

It is important that our customers understand our credit policies and payment terms. The Conditions of Contract that govern all shipments and Bills of lading can be found on the reverse side of Shippers copy of the Danzas AEI Inc. House Air Waybill, Ocean Bill of Lading, and invoices are also contained in our tariff which are on file at any Danzas AEI Inc. office.

In consideration of Danzas AEI Inc. accepting credit of my company, I/we understand that terms of payment are due on receipt. In addition, I/we agree to pay a service charge equal to 1% per month or the legal maximum rate in our state for all past due amounts exceeding 30 days and agree to pay all reasonable legal and/or collection fees incurred by Danzas AEI Inc. to secure payment for any Past Due amounts.

I/we hereby declare that the enclosed credit information is true and accurate to the best of my/our knowledge and belief. We hereby authorize any institution herein listed as credit reference, bank or trade reference to release credit information concerning myself and/or the company I/we represent to Danzas AEI Inc. This authorization is given to enable Danzas AEI Inc. to promptly and fairly evaluate my/our request for credit. In order to facilitate possible future requests for credit from Danzas AEI Inc. or from other creditors, we further authorize Danzas AEI Inc. to disclose factual information regarding the record of payments on our accounts.

By submitting this our credit application, Customer hereby understands and agrees that the determined credit limit will be applicable to its business relationship with Danzas AEI and all of its subsidiaries. Customer voluntarily and knowingly assents to all of the aforementioned legal entities' standing in a court of law based upon the signing of this one credit application.

PERSONAL GUARANTEE

In order to induce Danzas AEI Inc. to give credit to my/our company, I/we give Danzas AEI Inc. a personal guarantee. I/we understand that this is a continuing guarantee and shall cover future charges arising under successive shipments so long as my/our company continues to ship with Danzas AEI Inc. under these credit terms.

DATE: 5/13/03
BY: C.C. BY: Shaynif
(NO TITLE) (NO TITLE)

AMOUNT OF CREDIT DESIRED	
<u>\$ 10,000</u>	
FOR DANZAS SALES DEPT. USE ONLY	
DATE:	<u>5/13/03</u>
BY:	<u>C.C.</u>
BY:	<u>Shaynif</u>
Branch Name _____	
Sales Representative Name _____	
Submitted By _____	
Account Number _____	

Signature of owners or officers are required. Two signatures are required on Partnership applications.

EXHIBIT B

DANZAS**INTERCONTINENTAL****CREDIT APPLICATION**

P.O. Box 68728 • Renton, WA 98068-1728

Phone: (425) 430-4144
Fax: (425) 917-2825

PE OR PRINT ALL INFORMATION

NAME Krofta Technologies Corp. DIA Dayton PHONE (413) 236-5134ADDRESS 401 South Streeet CITY MA STATE MA ZIP 01226CITY DaytonSTATE MAZIP 01226DATED 2-3-04
BY W. G. Steiner
TRENTON, MA 02706

PE OR PRINT ALL INFORMATION

NAME Krofta Technologies Corp.ADDRESS 401 South StreetCITY DaytonSTATE MAZIP 01226CITY Dayton

CREDIT AND BILLING TERMS

It is important that our customers understand our credit policies and payment terms. The Conditions of Contract that govern all shipments and limits of our liability can be read on the reverse side of Shippers copy of the Danzak AEI Inc. House At Waybill, an Bill of Lading, and invoices are also contained in our faint which are on file at Danzak AEI Inc. office.

In consideration of Danzak AEI Inc. accepting credit of my company, I/we understand that terms of payment are due on receipt. In addition, I/we agree to pay a service charge equal to 1% per month or the legal maximum rate in our state for all past dues exceeding 30 days and agree to pay all reasonable legal and/or collection fees incurred by Danzak AEI Inc. to secure payment for any Past Due amounts.

I/we hereby declare that the enclosed credit information is true and accurate to the best of my/our knowledge and belief. I/we hereby authorize any institution herein listed as credit reference, bank or trade reference to release credit information concerning myself and/or the company I/we represent to Danzak AEI Inc. This authorization is given to enable Danzak AEI Inc. to promptly and fairly evaluate my/our request for credit. In order to facilitate future requests for credit from Danzak AEI Inc. or from other creditors, I/we further authorize Danzak AEI Inc. to disclose factual information regarding the record of payments on our accounts.

By submitting this one credit application, Customer hereby understands and agrees that the determined credit limit will be applicable to its business relationship with Danzak AEI and all of its subsidiaries. Customer voluntarily and knowingly assents to all of the aforementioned legal entitles standing in a court of law based upon the signing of this one credit application.

Document 18

PERSONAL GUARANTEE

In order to induce Danzak AEI Inc. to give credit to my/our company, I/we give Danzak AEI Inc. a personal guarantee. I/we understand that this is a continuing guarantee and shall cover future charges arising under successive shipments so long as my company continues to ship with Danzak AEI Inc. under these credit terms.

DATE: _____
BY: _____ (NO TITLE) BY: _____ (NO TITLE)

AMOUNT OF CREDIT DESIRED	FOR DANZAK SALES DEPT. USE ONLY
\$ 50,000.00	
DATE: 2/3/04	
BY: Myself	
BY: <u>John Kieckhufer</u>	TITLE: President
Branch Name	
Sales Representative Name	
Submitted By	
Account Number	

Signatures of owners or officers are required. Two signatures are required on Partnership applications.